



Federal Communications Commission
Consumer & Governmental Affairs Bureau
Washington, D.C. 20554

CGB

SEP 15 2003

02-278

Control No. 0302567/aw

The Honorable Jeb Hensarling
U.S. House of Representatives
10675 E. Northwest Highway, Suite 1685
Dallas, TX 75238

RECEIVED

SEP 29 2003

Dear Congressman Hensarling:

Federal Communications Commission
Office of the Secretary

Thank you for your letter on behalf of your constituent, Ms. Gloria Meraz, regarding the Federal Communications Commission's (Commission) recent amendment to the rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). Specifically, Ms. Meraz expresses concern that the Commission reversed its prior conclusion that an "established business relationship" constitutes the necessary express permission to send an unsolicited facsimile advertisement. Ms. Meraz indicates that requiring such express permission to be in writing will place onerous burdens on associations that wish to fax their members.

On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) in CG Docket No. 02-278, seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. The NPRM sought comment on the option to establish a national do-not-call list, and how such action might be taken in conjunction with the national do-not-call registry rules adopted by the Federal Trade Commission (FTC) and the numerous state do-not-call lists. In addition, the Commission sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's Report and Order released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.

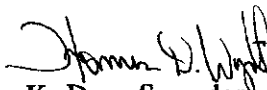
No. of Comments 2
List Attached

As we explained in the Report and Order, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing.

The Commission's amended facsimile advertising rules were initially scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July Report and Order, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the Report and Order indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. Enclosed is a copy of the Commission's Order on Reconsideration, released on August 18, 2003.

We appreciate Ms. Meraz's comments. We have placed a copy of Ms. Meraz's correspondence in the public record for this proceeding. Please do not hesitate to contact us if you have further questions.

Sincerely,


For K. Dane Snowden

Chief

Consumer & Governmental Affairs Bureau

Enclosures

JEB HENSARLING
MEMBER OF CONGRESS
TEXAS, 5TH DISTRICT

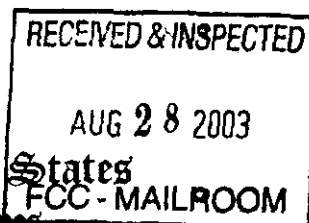
COMMITTEES:
BUDGET
FINANCIAL SERVICES



Congress of the United States
House of Representatives

Washington, DC 20515

August 21, 2003



DISTRICT OFFICES
10675 EAST NORTHWEST HIGHWAY
SUITE 1685
DALLAS, TX 75238
(214) 349-9996

100 EAST CORSICANA STREET
SUITE 208
ATHENS, TX 75751
(903) 675-6286

Ms. Diane Atkinson
Congressional Liaison Specialist
Federal Communications Commission
445 12th Street, S.W., Room 8-C453
Washington, D.C. 20554

Re: Gloria Meraz

Dear Ms. Atkinson:

I have received the enclosed correspondence from a constituent. Since this issue falls under the jurisdiction of your agency, please review the information and forward your reply to my district office by facsimile at (214) 349-0738, or by mail at:

10675 E. Northwest Highway
Suite 1685
Dallas, TX 75238

Thank you in advance for your assistance. If you need any additional information please contact Margaret Smith of my staff at (214) 349-9996.

Yours Respectfully,

JEB HENSARLING
Member of Congress

JH/ms
Enclosure

CGTB
Policy-TCPA
2567

28 AUG 2003 RCUD



August 7, 2003

Representative Jeb Hensarling
U.S. House of Representatives
Room 423 Cannon Office Bldg.
Washington, D.C. 20515

Dear Representative Hensarling,

On behalf of the Texas Library Association (TLA), I am writing to alert you of recent actions taken by the FCC to amend the regulations that implement the Telephone Consumer Protection Act of 1991 (TCPA). The FCC has decided, without the proper input from the business and association community, to modify the current law by doing away with the "established business relationship" provision pertaining to fax advertisements. This amendment will place onerous administrative and economic burdens on associations by requiring "expressed written consent" from their own members prior to sending a fax advertisement.

For TLA, this ruling would forbid us from communicating with our members in ways that are normal and expected. For example, we would be unable to send information about continuing education opportunities, membership renewal, and updates in state and federal laws and regulations. As a charitable educational group, our members rely on us to provide them with information. Since many of our members do not yet have email access, faxing information is by far the best and most cost effective solution for our organization.

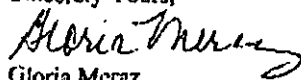
The new FCC reading of the TCPA prohibits any person or entity from sending any fax that contains an unsolicited advertisement which is defined as "any material advertising the commercial availability or quality of any property, good, or services which is transmitted to any person without that person's prior express invitation or permission." As a result, the established business relationship is no longer sufficient to permit faxes to be transmitted. Associations and businesses are now faced with the challenging administrative, legal, economic, and record keeping ramifications that will arise thanks to the new FCC changes.

The proposed changes, which are scheduled to go into effect on August 25, 2003 - 30 days after they were published in the Federal Register on July 25, 2003, will create a significant economic and labor-intensive burden for the association community. The adjustment in the TCPA will require signed written consent to allow faxes to be sent that contain unsolicited advertisements. It would even require written consent for faxes pertaining to events such as annual meetings.

With penalties reaching \$11,000 per authorized fax, this is a burden that few associations can financially endure. The proposed FCC changes are a prime example of an idea where the disadvantages and unintended consequences far outweigh the benefits. Please join us in requesting that the FCC halt their efforts to change the current TCPA.

If you or your staff have any additional questions, please feel free to contact me. We thank you for your consideration of this matter.

Sincerely Yours,


Gloria Meraz
Director of Communications

www.tsla.org

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